

RECORDS MANAGEMENT COMMITTEE
Council Chambers Conference Room, City Hall
400 Stewart Avenue, Las Vegas, Nevada
CITY OF LAS VEGAS INTERNET ADDRESS: <http://www.ci.las-vegas.nv.us>

May 16, 2003
1:30 p.m.

CALL TO ORDER: City Clerk Ronemus called the meeting to order at 1:41 p.m.

ATTENDANCE: Barbara Jo (Roni) Ronemus, City Clerk
Steve Houchens, Deputy City Manager (arrived 1:44 p.m.)
John Redlein, Assistant City Attorney
Mark Vincent, Director, Finance & Business Services
Joseph Marcella, Director, Information Technologies (arrived 2:46 p.m.)
Richard Goecke, Director, Public Works (excused)
Charles Kajkowski, Public Works (Designee)
Radford Snelding, City Auditor (excused)
Sharon Kuhns, Records Administrator
Vicky Darling, Assistant Deputy City Clerk

ANNOUNCEMENT MADE RE COMPLIANCE WITH THE OPEN MEETING LAW -
Meeting noticed and posted at the following locations:

Las Vegas-Clark County Library District, 833 N. Las Vegas Boulevard
Senior Citizens Center, 450 E. Bonanza Road
Clark County Government Center, 500 S. Grand Central Pkwy
Court Clerk's Bulletin Board, City Hall Plaza
City Hall Plaza, Posting Bulletin Board

(1:41)

1-1

BUSINESS:

1. APPROVAL OF FINAL MINUTES BY REFERENCE OF THE RECORDS MANAGEMENT COMMITTEE MEETING OF NOVEMBER 15, 2002

REDLEIN - Motion to APPROVE – MARCELLA seconded the motion – UNANIMOUS with Kajkowski abstaining as he was not present at the 11/15/2002 meeting and Houchens and Snelding excused

City Clerk Ronemus pointed out that the final version of the destruction form was finalized at the 11/15/2002 meeting will not go into effect until the retention schedules are completed. Completion of the retention schedules is a key focus for the City Clerk's

office in the future. The destruction form will be reevaluated once the schedules are in place, but for now the form addresses all the concerns raised.

There was no further discussion.

(1:42 – 1:43)

1-31

2. REPORT AND POSSIBLE DISCUSSION ON THE STATE OF NEVADA OFFICE OF THE ATTORNEY GENERAL OPINION NO. 2002-32 PUBLIC RECORDS: CONFIDENTIALITY AND OPINION NO. 2003-01 PUBLIC RECORDS: OPEN MEETING LAW

Assistant City Attorney Redlein requested the 2003 opinion be trailed to the future. As to 2002-32, it touches on the fact that all records are public unless there is a more specific exception created by public policy. The opinion also clarifies that materials provided as backup to a public body for a meeting, those records are public unless, again, deemed confidential as a result of an overriding exception resulting from public policy. He cited attorney-client confidentiality and/or criminal records/histories of applicants. Both such records are deemed to be confidential, regardless of whether such records might inadvertently be included in backup or released in error. For the City, there are extenuating circumstances in that while the backup might not be obtainable due to confidentiality, the records are public via the department. Mr. Vincent added that another such exception is the secrets and contract confidentiality under NRS 332. Ms. Kuhns stressed that the onus of identifying such exceptions would rest with the office of primary responsibility.

Assistant City Attorney Redlein added that the client may always waive attorney-client confidentiality and that it is not waived because a memo is left on a desk and read by someone not intended to see it. He outlined a situation where an applicant for a position or developer might provide confidential information such as a resume or performa, a promise of confidentiality by the City would not override the public record standard. An Arizona case determined that an applicant for a position could be notified of the request and then given a period of time to withdraw their application and documentation submitted. Mr. Vincent noted that when his staff is unsure, they seek a determination from the City Attorney's office.

Assistant City Attorney Redlein stressed that the opinion demonstrates that the public nature of the backup is weak compared to other more specific law regarding confidential records. In some instances, there is no declared confidentiality. However, the argument can and has been made that the greater public policy means that the public records should not be disclosed. This would include autopsy reports. The best public interest is not justification for preventing individual embarrassment. Another example he cited is the release of cell phone records with the exception of the number of the official's cell phone. How an official utilizes a cell phone paid for by the taxpayers is of public interest. However, providing the number of the cell phone in question would provide access that could be used to waste staff time and result in increased cell phone bills. That

is not in the public's best interest. Although the City's policy is to be accessible and responsive, case law has been made that there is no public right to speak to a public official. So long as requested records are available and provided, the public record law is not being violated. Mr. Couzens stated that the individual taxpayer is not the employer of a staff member. Mr. Kajkowski added that even without a cell phone number, the public is not denied access since they can reach a staff member via a land line.

Assistant City Attorney Redlein clarified that it is not providing the number to an individual that would be against the public's best interest, but making it accessible to everyone by way of a newspaper article. Likewise, protecting a company's performance as confidential benefits the developer and not the public and would likely not be deemed confidential as a matter of public policy. However, such a developer could be notified of a request for the record and he would advise that developer as to seeking an injunction if the developer felt that strongly about confidentiality. Assistant City Attorney Redlein stated that he would be more than happy to follow whatever direction would be given by the judge in such a case.

Mr. Couzens described a situation where the County provided backup that included the social security numbers of approximately 18 people. Assistant City Attorney Redlein pointed out that there is federal law regarding the confidentiality of social security numbers.

Deputy City Manager Houchens discussed with Assistant City Attorney Redlein that there could be liability were the City to disclose documentation submitted with the belief that it would be held in confidence. The breach of that supposed agreement for confidentiality could create liability, but it would be limited to whatever damages the other party could prove. It would be more likely that such individuals or companies would stop doing business with the City.

There was no further discussion.

(2:05 – 2:41)

1- 94

3. REPORT AND POSSIBLE DISCUSSION ON THE STATUS OF THE RECORDS STORAGE FACILITY AND ARCHIVES

City Clerk Ronemus advised that during the 4/23/2003 budget workshop, Councilman Brown mentioned the records storage facility and design of City Hall as needing to be looked at in the capital plan. As a result, she provided informational briefings to individual members of the Council regarding the authority for the facility and statistics on the economic impact of existing storage uses. The Departments have done a lot of work reviewing and organizing their internal records. One of the pieces of information included that a four-drawer file cabinet costs, including the footprint, approximately \$25,000 and then an additional \$2,000 annually in order to maintain that same cabinet. Further, the space being used for storage could be used in better ways.

The 10,000 square foot facility would be for records in a holding pattern. Once the records reach the expiration of their retention period, they can be destroyed in order to make room for more records. Her only requirements for the facility is that it be off-site and not in a flood plane. The location identified is because the land is available. Mr. Marcella added that the best practice for distance is six miles. He also pointed out that his Department is funding part of the building as being the location for the contingency systems. The distance is good, power is appropriate and the other necessities are in place.

Assistant City Attorney Redlein discussed with City Clerk Ronemus and Ms. Kuhns that the permanent records will also be microfilmed and kept separate from the paper record. The facility would be only for inactive records. There was research done on sharing the library in Carson City, but there were shipping and ownership issues. The construction of the building would be the most expensive aspect of the project. Mr. Vincent pointed out that subsequent operating expenses, mostly utilities and maintenance, are projected at \$118,000 per year. The savings would come from existing rental expenses. Ms. Kuhns explained that commercial storage is very costly. For example, the Manpower building is leased and results in storage costs. City Clerk Ronemus indicated that retrofitting a building would also be expensive. There will be a status report on the matter to Council at the 5/20/2003 Budget Hearing. Mr. Vincent commented that based on past guidance, if the budget is adopted as submitted, the facility will be on the funded list.

Deputy City Manager Houchens asked about the height of the structure. City Clerk Ronemus responded that it will be single-story with the ability to multi-level within the structure. Assistant Deputy City Attorney Redlein discussed with Ms. Kuhns the arrangement for records review in the facility as well as a fax machine and computer on site. She has experience with using this process in the past. Deputy City Manager Houchens confirmed with City Clerk Ronemus and Ms. Kuhns that even if someone wished to visit the facility over the strong suggestion of Ms. Kuhns or Clerk staff, they will be assisted by Clerk staff.

Mr. Marcella pointed out that the climate control for paper works nicely for the electronic media as well. As a result, no retrofitting will be necessary in the future other than changing out racks for storage. Ms. Kuhns commented that the building will be heated and cooled using gas packs and swamp coolers, as is the standard for archival purposes. Mr. Kajokowski outlined experience with the high level of labor maintenance required by swamp coolers. When the evaporation does not take place, the unit will not cool. City Clerk Ronemus stated that some of the lighting will be strictly through skylights and she will investigate maintenance problems experienced by other records facilities. Mr. Marcella clarified that the purpose of the climate control is to dispel moisture.

Assistant City Attorney Redlein verified that the building containing the valuable records will be secured with a security system as well as being located in a gated complex which already has medium-level security. Mr. Marcella stressed that the facility would enhance efficiency in storage and retrieval as well as allow for automation of indexing and management. City Clerk Ronemus repeated that updating the retention schedules will be key along with establishing the offices of

primary responsibility issues. Ms. Kuhns and Mr. Vincent commented that the central location will make for better control and that the Clerk's office will remind departments when a retention period has expired and is ready for destruction.

Assistant City Attorney Redlein outlined some concerns with the destruction process. Ms. Kuhns rebutted that the form is for records in the facility and for records retained within a department. City Clerk Ronemus indicated that the records in the facility will be shredded by the Clerk's office as well. Ms. Kuhns explained that the equipment may be purchased or the service contracted for based upon a cost justification.

Mr. Marcella commended Mr. Couzens on his article regarding the records storage facility. City Clerk Ronemus noted that it demonstrated a good grasp of the situation.

There was no further discussion.

(1:43 – 2:05)

1-819

4. INFORMATIONAL MATTERS FOR FUTURE RECORDS MANAGEMENT COMMITTEE AGENDAS

City Clerk Ronemus and Mr. Marcella discussed that the consultant, IMERGE, had been reviewing the City's overall electronic document management and that the comprehensive study would be ready for presentation to the Committee at the July meeting. It is expected that a City Manager Information Report will be distributed regarding the global piece as applies to the many business applications being installed throughout the City. The next phase will be implementation by either IMERGE or some other contractor.

There was no further discussion.

(2:41 – 2:45)

1-2254

CITIZENS PARTICIPATION:

Fred Couzens questioned Assistant City Attorney Redlein how willful concealment would be identified pursuant to NRS 439.310. Assistant City Attorney Redlein replied that were someone to advise that all the records had been provided and yet failed to provide anything that was not deemed confidential as discussed earlier, that would be deliberate concealment and constitute criminal activity. Ms. Kuhns stressed that such activity is a Class C felony. Assistant City Attorney Redlein summarized the components of the crime a prosecutor would have to prove in order to get a conviction.

(2:45 – 2:47)

1-2378

ADJOURNED:

VINCENT - Motion to ADJOURN – MARCELLA seconded the motion – UNANIMOUS with Snelding excused

The meeting adjourned at 2:47 p.m.

/vwd